THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
CABLE TELEVISION DIVISION

In the Matter of	)	Docket No. CTV 00-1		
	)	Date Issued: November 22, 2000		
	)			
MediaOne of	)	Andover		Middleton
Massachusetts, Inc.	)	Barnstable		Nantucket
d/b/a AT&T Broadband	)	Chatham		North Reading
	)	Dennis		Waltham
For a Determination of	)	Dracut		Yarmouth
Cable Television Rates	)	Harwich		
	)			

RATE ORDER

APPEARANCES: James G. White, Jr., Senior Counsel
AT&T Broadband
6 Campanelli Drive
Andover, MA 01810-1095
FOR: AT&T BROADBAND
Petitioner

Jane Walton
22 North Pasture Lane
Nantucket, MA 02554
FOR: THE TOWN OF NANTUCKET
Intervenor

Alan F. Daly
P.O. Box 408
Chatham, MA 02633
FOR: THE TOWN OF CHATHAM
Limited Participant

I. INTRODUCTION

On March 28, 2000, MediaOne of Massachusetts, Inc., now offering services as AT&T Broadband ("AT&T Broadband" or "the Company"),[1] filed with the Cable Television Division ("Cable Division") of the Department of Telecommunications and Energy proposed basic service tier ("BST") programming rates on Federal Communications Commission ("FCC") Form 1240 for the above-captioned communities. Pursuant to federal rate regulations, AT&T Broadband put its proposed BST rates into effect on July 1, 2000, subject to review and refund. 47 C.F.R. § 76.933(c).

The Cable Division held a public and evidentiary hearing on the pending filings in Chatham on October 4, 2000. The Town of Nantucket was admitted as an Intervenor in this proceeding, and the Town of Chatham was admitted as a Limited Participant. The evidentiary record consists of the 11 AT&T Broadband exhibits consisting of the Company's rate filings for the above-captioned communities, nine Cable Division exhibits consisting of AT&T Broadband's responses to our information requests, and four AT&T Broadband responses to record requests posed by the Cable Division. No briefs were filed by any party.

II. STANDARD OF REVIEW AND BURDEN OF PROOF

The standard under which the Cable Division must review rate adjustments on FCC rate forms is found in the FCC's rate regulations. Specifically, the regulations provide that the rate regulator shall assure that the rates comply with the requirements of 47 U.S.C. § 543 of the Cable Television Consumer and Competition Act of 1992 as amended (the "Cable Act"). 47 C.F.R. § 76.922(a). The Cable Division may accept as in compliance with the statute rates that do not exceed the "Subsequent Permitted Per Channel Charge" as determined by 47 C.F.R. § 76.922(c), and may also accept equipment and installation charges that are calculated in accordance with 47 C.F.R. § 76.923. In addition, the Cable Division shall only approve rates it deems reasonable under federal law. 47 C.F.R. § 76.937(d) and (e); 47 C.F.R. § 76.942.

In establishing whether proposed rates are reasonable and comply with federal regulations, the burden of proof is on the cable operator to demonstrate that its proposed rates for the BST and accompanying equipment comply with 47 U.S.C. § 543 and implementing regulations. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and Order and Further

---

[1] On June 15, 2000, MediaOne Group, Inc., the ultimate parent corporation of the MediaOne companies, was acquired by AT&T Corp. On August 21, 2000, the MediaOne companies adopted the name "AT&T Broadband", although their legal corporate names remained unchanged. The phrase "offering services as AT&T Broadband" is the company's own.

Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631 (released May 3, 1993) at 5727, ¶ 128; see also 47 C.F.R. § 76.937(a).

The FCC has created specific forms incorporating the provisions of its rate regulations, upon which cable operators must calculate their rates. Local rate regulators, such as the Cable Division, are required to review the Company's FCC rate form filings to determine whether the rates are reasonable and in compliance with the Cable Act. 47 C.F.R. §§ 76.922; 76.923; 76.930.

The FCC Form 1240 allows a cable operator to annually update its BST programming rates to account for inflation, changes in external costs, and changes in the number of regulated channels. In order that rates be adjusted on FCC Form 1240 for projections in external costs, or for projected changes to the number of regulated channels, the operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. 47 C.F.R. §76.922(e)(2)(ii)(A); 47 C.F.R. § 76.922(e)(2)(iii)(A). Although cable operators may project for increases in franchise related costs to the extent they are reasonably certain and reasonably quantifiable, such projections are not presumed to be reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(2)(ii)(A).

III. DISCUSSION AND ANALYSIS

A. Channel Additions in Andover, Nantucket and Waltham

In Andover, the channel line-up provided with the FCC Form 1240 showed that the number of BST channels increased from 19 on December 31, 1999 to 20 on July 1, 2000 (Exh. AT&T Broadband-1). However, the Andover FCC Form 1240 did not include a Worksheet 3, which would have reported the additional BST channel. In response to a Cable Division information request, AT&T Broadband explained that the new channel, added on March 7, 2000, was the MediaOne 3 Channel (now known as the AT&T 3 Channel) (Exh. CTV-1). As part of its response, AT&T Broadband on September 26, 2000 submitted an amended FCC Form 1240 for Andover that included a Worksheet 3 reflecting the channel increase (id.). However, this Worksheet 3 did not carry any adjustment over to the calculation of the new maximum permitted rate ("MPR"), at Line I2, and therefore did not affect the proposed MPR (id.).

At the public hearing, the Cable Division asked AT&T Broadband to explain why no adjustment had been taken. AT&T Broadband explained that under the Social

Contract,[2] it is not allowed to add any non "must-carry" channels[3] to the basic tier. See Social Contract for Continental Cablevision, Inc., FCC 95-335 (effective date August 1, 1995), at 10, Section III.B.1. The FCC extended the Social Contract to the communities covered by this Rate Order in Continental Cablevision, Inc., Social Contract, DA 97-1400 (released July 3, 1997).

The FCC Form 1240 filed for Nantucket also did not include a Worksheet 3, even though four BST channels had been added between January 1, 1999 and December 31, 1999 (Exh. AT&T Broadband-8). Similarly, the FCC Form 1240 filed for Waltham did not include a Worksheet 3, even though one channel had been added between January 1, 1999 and March 31, 1999, and a second channel had been added between December 31, 1999 and July 1, 2000 (Exh. AT&T Broadband-10). In response to information requests from the Cable Division, AT&T Broadband explained that three must-carry channels and the AT&T 3 Channel had been added in Nantucket, and that one must-carry channel and the AT&T 3 Channel had been added in Waltham (Exh. CTV-8; Exh. CTV-4). On September 26, 2000, the Company also submitted amended FCC Form 1240s containing Worksheet 3s for Nantucket and Waltham (id.). The amended forms report a $0.03 increase in the BST MPR in Nantucket, and a $0.01 increase in the BST MPR in Waltham solely as a result of the additional must-carry channels (compare Exh. AT&T Broadband-8, at Line I9 with Exh. CTV-8, FCC Form 1240, at Line I9, and Exh. AT&T Broadband-10, at Line I9 with Exh. CTV-4, FCC Form 1240, at Line I9).

In submitting its FCC Form 1240s, AT&T Broadband has continued to apply the channel movement rules contained in 47 C.F.R. § 76.922(g), even though that subsection officially sunsetted on December 31, 1997 pursuant to 47 C.F.R. § 76.922(g)(8). In two appeals to the FCC, AT&T Broadband expressed its belief that the FCC allowed 47 C.F.R. § 76.922(g) to sunset as a clerical error, and that its elimination would mean that a cable operator could theoretically eliminate most of its BST channels and still lawfully retain the same rate. TCI Cablevision of Dallas, Inc., Request for Stay of Local Rate Order, Farmer's Branch, TX, DA-1159 (released June 11, 1999) at ¶ 4; see also TCI TKR of Georgia, Inc., Request for Stay of Local Rate

---

2 The Social Contract between the Company (then Continental Cablevision, Inc.) and the FCC was entered into to resolve all the Company's outstanding cost-of service proceedings. The Social Contract also established a lifeline BST, gave the FCC sole authority to review FCC Form 1205 equipment filings through December 31, 2000, and required the Company to make major infrastructure investments. Social Contract for Continental Cablevision, Inc., FCC 95-335 (effective date August 1, 1995).

3 The FCC has adopted "must-carry" rules that require a cable operator to carry on its cable system a local commercial television station broadcasting in the same Designated Market Area within which the cable system is located. 47 C.F.R. § 76.55. If not previously carried, the broadcast station must request carriage. 47 C.F.R. § 76.61.

Order, Moultrie, GA, DA 00-406 (released February 25, 2000). The Cable Division agrees with AT&T's Broadband's analysis and approves its continued use of the channel movement rules.

Upon review of the terms of the Social Contract and applicable FCC regulations, the Cable Division determines that the Company's calculations with respect to added channels are reasonable and comply with applicable law. Accordingly, the Cable Division accepts as reasonable the Andover and Waltham FCC Form 1240s submitted in response to the Cable Division's information requests. The Nantucket FCC Form 1240 will be further discussed below, in Section III.C.

B. Harwich: Franchise Related Costs

When AT&T Broadband prepared its franchise related cost ("FRC") page for the current Harwich FCC Form 1240, by updating the subscriber numbers used on the previous FCC Form 1240, the Company found that it had made an inadvertent error in its calculations of FRC present values that resulted in an overstatement of the FRC (Exh. CTV-7).[4] The current value of a future payment is less than the face value of the actual payment itself, due to the time value of money. Simply stated, a dollar today is worth more than a dollar in the future. However, on its previous FRC worksheet, AT&T Broadband had incorrectly calculated the net present value of the future payments to be greater than the face value of the actual payments (compare Exh. AT&T Broadband-6, Franchise Related Costs, with RR-CTV-3). Using the proper methodology to set the present values on the current form reduces the monthly FRC element of the external costs segment of the basic rate from $0.58 to $0.24 per subscriber (Exh. AT&T Broadband-6, Schedule of Rates and Charges).

The $0.58 FRC element was factored into the true-up calculation on the 1999 FCC Form 1240 for Harwich for the four months from September 1, 1998 to December 31, 1998 (Exh. CTV-7). There is no mechanism on the current FCC Form 1240 to further adjust these four months of FRC payments once they have already been trued up on the previous form. To correct for this on the current FCC Form 1240, AT&T Broadband has proposed a negative adjustment to its FRC calculation, which reduces the FRC by an additional $0.02 (Exh. CTV-7; Exh. AT&T Broadband-6,

---

4 The present value methodology is used to adjust future principal payments to their value as of September 1, 1998, the Harwich license's effective date (Exh. AT&T Broadband-6, Franchise Related Costs). Thus, the Company treats all principal payments as if they were paid on the effective date, in order to establish a "net present value" for the payments that will be made over the life of the license. Using a net present value allows operators to state the value of future payments in today's dollars, which enables operators to calculate a single or "level" monthly FRC increment that may be charged to subscribers over the life of the license. This methodology has been approved by the Cable Division. See MediaOne of Massachusetts, Inc., et al., Agawam et al., Y-96 INC (issued November 19, 1997).

Franchise Related Costs). This resulted in an FRC element of the external costs segment of $0.22, included in the Harwich BST rate since July 1, 2000 (Exh. AT&T Broadband-6, Schedule of Rates and Charges). This $0.22 amount will be the monthly FRC element included in the company's future calculation of external cost adjustments in Harwich for the duration of the license (Exh. CTV-7). Additionally, the current AT&T Broadband FCC Form 1240 compensates Harwich subscribers for FRC overpayments made during the true-up period (January 1, 1999 to December 31, 1999) by reducing the projected period's BST rate that subscribers have paid since July 1, 2000 by approximately $0.40 (Exh. AT&T Broadband-6, Line I8). The Cable Division has reviewed these calculations and finds the Company's proposals to correct for its mathematical errors to be reasonable.

C. Nantucket Franchise Related Costs

AT&T Broadband reported a decrease in the FRC component of the external costs listed on Worksheet 7, Projected Period, from the previous Nantucket FCC Form 1240 to the current Nantucket FCC Form 1240 (Exh. CTV-9). AT&T Broadband explained that the Nantucket license allowed Nantucket to obtain $30,000 for programming support upon request, and an additional $15,000 for public, educational and governmental ("PEG") access programming in March 2002, the fifth year of the license, should Nantucket be producing 20 hours of local non-duplicative programming at that time (RR-CTV-4; Hearing Audiotape, Side 1, at counter 653-665). Previous FCC Form 1240s, beginning with the 1997 form, levelized and amortized both the $30,000 and the $15,000 amounts over the ten-year life of the license, on the belief that Nantucket would be qualified to request the $15,000 payment in 2002 (Exh. CTV-9). In preparing the current FCC Form 1240, AT&T Broadband removed the projected $15,000 payment amount, on the determination that Nantucket would not request the funding (id.). AT&T Broadband also adjusted downward its FRC amount to compensate for that portion of the $15,000 already paid by subscribers (Exh. CTV-9; Exh. AT&T Broadband-8, Franchise Related Costs).[5]

At the rate hearing, Nantucket took exception to AT&T Broadband's removal of the $15,000 payment, stating that it was determined to meet the deadline and be qualified to request the $15,000 payment (Hearing Audiotape, Side 1, at counter 659-665). While we make no finding about Nantucket's ability or determination to produce the necessary programming to qualify for the $15,000 payment, including the $15,000 within the current filing raises some concerns. The payment is not automatic, it is contingent, and there exists the possibility that unexpected events between now and March 2002 might result in Nantucket not receiving the payment. Should this occur, subscribers in Nantucket would have been overcharged. For this reason, the FCC's

[5] This adjustment was also included in the amended FCC Form 1240 filed on September 26, 2000 to include must-carry channels; see Section III.A, supra (Exh. CTV-8).

regulations require that operators be reasonably certain with respect to their FRC projections. Specifically, the regulations provide: "[o]perators may project for increases in franchise related costs to the extent that they are reasonably certain and reasonably quantifiable, but such changes are not presumed reasonably certain and reasonably quantifiable." 47 C.F.R. § 76.922(e)(2)(ii)(A). If the $15,000 were included and Nantucket were unable to qualify, refunds to subscribers would be necessary. Though this refund mechanism exists, it is not ideal since there is no assurance that all the subscribers who paid the overcharges would be subscribers at the time of the refund.

In response to a Cable Division record request, AT&T Broadband submitted two revised FRC calculations, one amortizing the $15,000 payment over the entire ten years of the license, as AT&T Broadband had done in its previous filings and as Nantucket preferred, and the second starting the amortization of the $15,000 payment in 2002, as AT&T Broadband now proposes (RR-CTV-4). AT&T Broadband reported that based on current subscriber counts, the difference in the two approaches is that the ten year approach results in a monthly FRC of $0.06 per subscriber over the life of the license, whereas commencing amortization in 2002 results in a monthly FRC of $0.04 per subscriber until 2002, when the monthly FRC would increase to $0.10 per subscriber for the remaining six years of the license (id.). The difference to subscribers is that under AT&T Broadband's approach, subscribers until 2002 would be charged $0.02 per month less than they would be under Nantucket's preferred approach. If the $15,000 payment is then made in 2002, subscribers under AT&T Broadband's approach would thereafter be paying $0.04 more than they would be under Nantucket's approach.

AT&T Broadband's approach recognizes that Nantucket's qualification for the $15,000 payment in 2002 is a contingency, and thus better satisfies the FCC's rule. It avoids the possibility of a refund in the unlikely event that Nantucket should fail to qualify. Because of the very small amount of the monthly charges involved, AT&T Broadband's approach would impose no undue burden on subscribers in later years of the franchise agreement. Therefore, the Cable Division finds AT&T Broadband's proposal to be reasonable. We accept as reasonable the Nantucket FCC Form 1240 filed on September 26, 2000. We instruct AT&T Broadband to adjust its FRC for Nantucket after the $15,000 payment is made.

D. North Reading Institutional Network Annual Maintenance Fee

The North Reading FCC Form 1240 reported an Institutional Network ("I-Net") maintenance fee of $162.12 per mile per year (Exh. AT&T Broadband-9, Franchise Related Cost). AT&T Broadband reported that this number represents the difference between the cost of maintaining the I-Net under the previous license, and the current cost of maintaining a 10-mile hybrid fiber coax I-Net under the current license (Exh.

CTV-3). While AT&T Broadband actually has constructed a 27-mile Broadband Fiber-Optic Network in North Reading, it does not propose to recover the maintenance costs of this I-Net in this proceeding. Upon review, the Cable Division determines that the proposed adjustment in the FRC appears reasonable, and the Company's calculations are consistent with applicable law. Accordingly, the Cable Division accepts the North Reading FCC Form 1240 as filed.

IV. CONCLUSION AND ORDER

Upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, AT&T Broadband's FCC Form 1240s as filed on March 28, 2000 for Barnstable, Chatham, Dennis, Dracut, Harwich, Middleton, North Reading and Yarmouth. The Cable Division hereby rejects AT&T Broadband's FCC Form 1240s as filed on March 28, 2000 for Andover, Nantucket and Waltham.

Upon due notice, hearing and consideration, the Cable Division hereby accepts as reasonable and in compliance with applicable statutes and regulations, AT&T Broadband's FCC Form 1240s as submitted on September 26, 2000 for Andover, Nantucket and Waltham.

The attached schedule provides the previous, current permitted and approved basic service tier programming rates for each community.

By Order of the
Department of Telecommunications and Energy
Cable Television Division

/s/ Alicia C. Matthews
Alicia C. Matthews
Director

APPEALS

Appeals of any final decision, order or ruling of the Cable Division may be brought within 14 days of the issuance of said decision to the full body of the Commissioners of the Department of Telecommunications and Energy by the filing of a written petition with the Secretary of the Department praying that the Order of the Cable Division be modified or set aside in whole or in part. G.L. c. 166A, § 2, as most recently amended by St. 1997, c. 164, § 273. Such petition for appeal shall be supported by a brief that contains the argument and areas of fact and law relied upon to support the Petitioner's position. Notice of such appeal shall be filed concurrently with the Clerk of the Cable Division. Briefs opposing the Petitioner's position shall be filed with the Secretary of the Department within seven days of the filing of the initial petition for appeal.